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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 922.

THE UNITED STATES, APPELLANTS,

vs.

WILLIAM F. SMITH.

APPEAL FROM THE COURT OF CLAIMS.

FILED FEBRUARY 2, 1876.

SUPREME COURT OF THE UNITED STATES.

No. 922.

THE UNITED STATES, APPELLANTS,

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WILLIAM F. SMITH.

APPEAL FROM THE COURT OF CLAIMS.

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1 *Petition.—Filed August* 19, 1868.

U. S. Court of Claims.

WILLIAM F. SMITH
vs.
THE UNITED STATES. } 3486.

To the honorable Court of Claims:

The petition of William F. Smith, a citizen of the United States, resident in the State of Louisiana, respectfully represents:

That in the month of December, A. D. 1863, your petitioner was the owner and in possession of fifteen bales of cotton, of the aggregate weight of six thousand pounds, then stored on a plantation owned by him, in the county of Washington and State of Mississippi; that about the 20th day of December, A. D. 1863, all of the said cotton was seized and taken possession of by the United States forces, acting, as your petitioner is informed and believes, under orders of Major-General Steele, but without the consent of your petitioner and against his will; that no part of the said cotton, or its proceeds, was appropriated in any way to the use of the Army or Navy of the United States, but the said cotton was turned over by the officers seizing it to an agent of the Treasury Department, by whom it was sold, and the net proceeds thereof have been paid into the Treasury of the United States.

Your petitioner avers that he is unable to state the precise sum for which said cotton was sold, or the expenses attending its seizure, shipment, transportation, and sale, but he states, on information and belief, that the net proceeds thereof, which have been paid into the Treasury, amount to the sum of forty-five hundred dollars.

Your petitioner further shows, that his said cotton has never been abandoned or forfeited, or become liable to confiscation under any of the acts of Congress in that behalf made and provided, and that it was not liable to seizure or capture under the laws of nations or the rules and usages of war; that no proceedings for the purpose of condemning said cotton have ever been instituted in any court or before any tribunal.

Your petitioner avers that his property having been taken possession of by the United States Government, and appropria-
2 ted by it, an implied contract has arisen to make your petitioner just compensation therefor by paying him all that said cotton was reasonably worth at the time and place it was so taken from him as aforesaid.

And your petitioner shows that said cotton, at the time and place of its seizure, was worth the sum of forty-five hundred dollars, which amount he is entitled to receive from the United States under the implied contract as stated above.

Your petitioner further shows, that if there has been a valid and lawful capture of said cotton, which he understands is asserted by the United States, he is nevertheless entitled to receive the net proceeds of it, amounting to the said sum of forty-five hundred dollars, ($4,500,) under the provisions of the 3d section of the act of Congress approved March 12, 1863, entitled "An act to provide for the collection of abandoned property, and for the prevention of fraud in insurrectionary districts within the United States."

Your petitioner further shows that he has at all times borne true allegiance to the Government of the United States, and that he has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government; and he prays the judgment of this honorable court for the said sum of forty-five hundred dollars, and for

such other and further relief as the nature of his case may show he is entitled to.

Charles F. Peck, being duly sworn, deposeth and saith that he is the agent of the claimant in the foregoing petition; that no assignment or transfer of said claim or any part thereof, or any interest therein, has been made except as in said petition is stated; that the claimant is justly entitled to the amount therein claimed from the United States, after allowing all just credits and offsets; and that he believes that the facts as stated in said petition are true.

CHARLES F. PECK.

Subscribed and sworn to before me, this 18th day of August, 1868.

JOHN J. MYERS,
Notary Public.

Claimant's address is—

Claimant's solicitors, Hughes, Denver & Peck, 258 G street, Washington, D. C.

3 In the United States Court of Claims, December term, A. D. 1868.

WILLIAM F. SMITH
vs.
THE UNITED STATES. } No. 3486.

And the said defendants, by their Attorney-General, come and make answer to the petition of the claimant on file herein; and, not confessing the same, or any part thereof, do hereby most expressly deny each and every the allegations therein contained, and call for strict proof of the same.

And as to so much of said petition as sets forth and avers that the United States are indebted to said claimant in the sum of forty-five hundred dollars, the defendants say that they are not indebted to said claimant in said sum of money, nor any part thereof.

And as to so much of said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against said Government, the said defendants deny the truth of said allegation, and call for proof thereof.

T. LYLE DICKEY,
Assistant Attorney-General.

Filed July 19, 1875.

4 In the Court of Claims.

WILLIAM F. SMITH
vs.
THE UNITED STATES. } 3486.

At a Court of Claims held at the Capitol, in the city of Washington, the 31st day of May, A. D. 1875, judgment was ordered to be entered up as follows:

The court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the said William F. Smith, claimant, do have and recover of and from the United States the sum of one thousand six hundred and seventy-nine dollars fifty-five cents, ($\$1,679\frac{55}{100}$,) being the net proceeds of fifteen bales of cotton, at $\$111\frac{97}{100}$ per bale.

By the court.

A true copy of record.

5 In the Court of Claims of the United States, Dec. term, 1874.

WILLIAM F. SMITH
vs.
THE UNITED STATES. } No. 3486.

From the judgment rendered in the above-entitled cause on May 31st, 1875, in favor of claimant, the defendants, by their Attorney-General, on the 8th day of July, 1875, make application for, and give notice of, an appeal to the Supreme Court of the United States.

THOMAS SIMONS,
Assistant Attorney-General.

Filed August 19, 1875.

AT CHAMBERS.

Allowed.

C. D. DRAKE, *C. J.*

6 United States Court of Claims.

SUNDRY COTTON-CASES.

Order of court made May 24, 1875.

On the motions to confirm the reports of Special Commissioner Eveleth, bearing date, respectively, the 2d day of March, 1875, and the 6th day of April, 1875, and the 21st day of April, 1875, after hearing counsel for the respective claimants and for the defendants, and after due consideration of the evidence offered in all of such cases—

It is ordered and directed that the said reports be, and are hereby, amended in the following particulars:

1. The first fund, consisting of Vicksburgh and Natchez cotton, intermingled so that the identity thereof has been destroyed, as described in the report, will stand at the sum of $948,313.30. The number of bales contributed to this fund by capture, and which it represents, will stand at 5,341 bales, and the price per bale which parties should recover will stand at $177.55 per bale.

The cases of—
James J. Persons, assignee, vs. The United States, (No. 3372,)
Daniel D. Dohan vs. Same, (No. 3557,)
Eliza A. Cochran vs. Same, (No. 3508,)
William E. Hall vs. Same, (No. 3423,)
Mary E. Bledsoe, guardian, vs. Same, (No. 3477,)
Martha Crane vs. Same, (No. 3554,)
are stricken out of the report and remanded to the general docket, with leave to both parties, claimant and defendant, to take further evidence, but upon condition that if any of the cases hereafter be brought to trial, and the claimant recovers out of the funds set forth in the report, the claimant, before judgment, shall pay to the commissioner his fees and expenses at the rate hereinafter prescribed for claimants whose cases are now prosecuted to judgment.

The cases of—
A. Perryman vs. The United States, (No. 3231,)
Anson Wolcott vs. Same, (No. 3345,)
Susan Bolls vs. Same, (No. 3193,)
Mrs. V. O. West vs. Same, (No. 3198,)
Sylvia A. Perry vs. Same, (No. 3255,)
T. C. A. Dexter vs. Same, (No. 3465,)
are remanded to the commissioner, but on condition that if it hereafter appear that they are entitled to relief out of the two funds now disposed of, the petitions shall be dismissed, and they are stricken out of this report.

In the cases of—
James A. Fox vs. The United States, (No. 3236,)
Jesse B. Ferguson vs. Same, (No. 3258,)
E. H. Pace vs. Same, (No. 3468,)
John Harod vs. Same, (No. 3472,)
Mrs. A. Smith vs. Same, (No. 3178,)
J. E. Fore vs. Same, (No. 3256,)
Joseph C. Jones vs. Same, (No. 3504,)
7 Cornelius T. Cunningham vs. Same, (No. 3370,)
Solomon Galinger vs. Same, (No. 3440,)
the report of the commissioner is confirmed, and judgment will be entered dismissing the petitions of the respective claimants.

In the case of Mrs. Nanette Switzer (late Abell) vs. The United States, (No. 3169,) the report of the commissioner is confirmed as to 73 bales of the cotton claimed, and the remaining 27 are found on the evidence to have been the property of the confederate government at the time of capture, and are now adjudged to be the property of the United States.

In the case of James A. Hutchinson vs. The United States, (No. 3499,) the report of the commissioner is confirmed as to 42 bales of the cotton claimed, and the remaining 23 bales are found on the evidence to have been the property of the confederate government at the time of capture, and are adjudged to be the property of the United States.

In the case of Joel H. Willis's administrator vs. The United States, (No. 3186,) the report of the commissioner is not confirmed, and the claimant is found on the evidence not to have proved the capture of the cotton sought to be recovered, and judgment will be entered dismissing the petition.

In the case of Seth H. Kellogg vs. The United States, (No. 3229,) the report is not confirmed as to the title of the claimant to the cotton sought to be recovered, and the evidence relied upon by the commissioner is excluded as incompetent. The case will be remanded to the general docket, with leave to the parties to give further evidence as to the title of the claimant and his vendors, John Buckingham & Co., to the cotton in suit, upon condition that, if the case be hereafter brought to trial, the claimant shall before judgment pay to the commissioner his fees and expenses at the rate hereinafter provided.

And it is further ordered that in the following cases the report of the commissioner be confirmed and judgment be entered in favor of the respective claimants for the quantity of cotton reported by the commissioner at the rates fixed by the foregoing amendments to his report:

FIRST FUND, AT $177.55 PER BALE.

Robert G. Johnson vs. The United States, (No. 2539,) 149 bales.
Ellen D. Balcheldor vs. Same, (No. 3150,) 51 bales.
John H. Newman vs. Same, (No. 3162,) 50 bales.
E. K. McLean vs. Same, (No. 3170,) 21 bales.
Thomas Y. Berry, administrator, vs. Same, (No. 3171,) 149 bales.
Juliet Glass vs. Same, (No. 3174,) 18 bales.
J. Reese Cook vs. Same, (No. 3175,) 40 bales.
Thomas A. Marshall vs. Same, (No. 3176,) 22 bales.
Richard Taylor vs. Same, (No. 3179,) 6 bales.
Thomas Kidd, guardian, vs. Same, (No. 3182,) 64 bales.
James Stewart vs. Same, (No. 3183,) 70 bales.
Charlotte Spear vs. Same, (No. 3184,) 70 bales.
Mary P. Marye's administrator vs. Same, (No. 3188,) 45 bales.
Thomas Kidd vs. Same, (No. 3191,) 480 bales.

Hiram Harrison vs. Same, (No. 3192,) 200 bales.
Duff Green vs. Same, (No. 3194,) 19 bales.
J. B. Brabston vs. Same, (No. 3196,) 32 bales.
Sarah Cowan vs. Same, (No. 3197,) 48 bales.
E. B. Willis vs. Same, (No. 3199,) 40 bales.
Emma J. Jones vs. Same, (No. 3293,) 100 bales.
Henry Bodenheim vs. Same, (Nos. 3354 & 3480,) 90 bales.
8 Alfred W. Brien vs. Same, (No. 3393,) 40 bales.
John L. Hebron's assignee vs. Same, (No. 3399,) 30 bales.
J. W. Maybins, assignee, vs. Same, (No. 3400,) 400 bales.
Armstead Burwell vs. Same, (No. 3419,) 118 bales.
John Willis vs. Same, (No. 3421,) 125 bales.
Wm. E. Hall vs. Same, (No. 3424,) 300 bales.
James Meagher vs. Same, (3439,) 69 bales; and for 45 bales specifically traced, $14,759.90.
Mary W. Thomas vs. Same, (No. 3466,) 112 bales.
Thomas H. Jett vs. Same, (No. 3470,) 25 bales.
George Hawkins vs. Same, (No. 3473,) 15 bales.
James J. Cowan, administrator, vs. Same, (No. 3474,) 120 bales.
Benjamin Harwood vs. Same, (No. 3498,) 75 bales.
Ann Maria Ragsdale vs. Same, (No. 3501,) 100 bales.
Alexander Hutchinson vs. Same, (No. 3510,) 130 bales.
John R. McAlpine vs. Same, (No. 3511,) 100 bales.
Isaac R. Wade vs. Same, (No. 3545,) 21 bales.
Clarissa Young vs. Same, (No. 3550,) 116 bales.
Ann Eliza Routh vs. Same, (No. 3413,) 75 bales.

THIRD FUND, AT $111.97.

E. E. Mount, administratrix, vs. The United States, (No. 3165,) 5 bales.
Frederick A. Metcalf, administrator, vs. Same, (No. 3539,) 55 bales.
Robert M. Douglas et al. vs. Same, (No. 9740,) 1,457 bales.
Wm. F. Smith vs. Same, (No. 3486,) 15 bales.

And it is further ordered that the engrossed and consolidated copy of the reports of the commissioner as amended by this order, filed herewith, stand as the findings of fact of the court.

And it is further ordered that there be allowed and paid to the commissioner by the several parties for whom judgment is now directed, for his fees and expenses, including those of Enoch Totten, esq., his legal assistant, the sum of $6,000, to be apportioned pro rata among the said several claimants, according to the amounts of their respective judgments as hereby directed. That $2,000 of said allowance be paid by the commissioner to his said assistant, Enoch Totten, esq., and that the entry of judgment in each case will be suspended until the claimant produces the commissioner's receipt for the party's ratable share of the allowance to the commissioner.

By the court.

9 WILLIAM F. SMITH *vs.* THE UNITED STATES. } No. 3486.

Findings of fact and conclusions of law.

CONSOLIDATED REPORT OF SPECIAL COMMISSIONER.

In pursuance of the order of this court, dated on the 4th day of June, 1873, appointing me a special commissioner for certain purposes therein set forth, I submit the above-entitled causes and the following report, embracing transactions in regard to cotton captured in the State of

Mississippi during the years 1863, 1864, and 1865, the records not exhibiting any captured in the year 1862.

During the years 1863, 1864, and 1865, fourteen thousand three hundred and thirty-five (14,335) bales of cotton were captured and taken from the owners in the State of Mississippi. The parcels of different owners were, except as hereinafter specifically stated, so that the identity of each parcel was destroyed and the property of each owner could not be traced. While in transitu, large quantities were stolen, destroyed, taken for military purposes, and otherwise lost from the mass. The remainder, amounting to twelve thousand seven hundred and twenty-two, (12,722,) has been accounted for in the accounts rendered by William P. Mellen, supervising special agent of the Treasury Department, and by Captains A. R. Eddy and G. L. Fort, officers of the Quartermaster's Department, viz:

		Bales.
Mr. Mellen's accounts		9,664
Captain Eddy's accounts		947
Captain Fort's accounts		2,111
In all		12,722
Of which there were released in kind to various persons	2,100	
There were burned, lost, or otherwise disposed of, as is shown in a tabulated statement marked "Exhibit No. 1," and appended hereto	259	
		2,359
And the number of bales sold is:		
By Mr. Mellen	7,439	
By Captain Eddy	813	
By Captain Fort	2,111	
		10,363
Out of the above proceeds there were nominally released, as hereinafter stated, by the officers of the United States to various persons claiming to have been the owners of some of the cotton sold	1,497	
The number of which the net proceeds were paid for collecting portions of the cotton sold is	139¾	
The number included in judgments entered in the United States Court of Claims is	2,702	
		4,338¾
And the number, the net proceeds of which, including custom-house fees and internal-revenue tax, remain available to meet judgments of the Court of Claims, is		6,024¼

The proceeds derived from the 10,363 bales sold are—			
By Mr. Mellen	7,439	"	$2,295,933 66
By Captain Eddy	813	"	247,143 08
By Captain Fort	2,111	"	429,663 39
	10,363		2,972,740 13

The expenses charged against the same are—

By Mr. Mellen:		
Freight, &c	$207,346 44	
Custom-house fees	117,862 93	
Internal-revenue tax	26,746 24	
		$351,955 61

By Captain Eddy:			
Auctioneers' fees, &c		2,842 41	
By the Treasury Department, as properly chargeable against proceeds of the sale by Captain Fort:			
Freight	$16,888 00		
Int. rev. tax	2,315 46		
		19,203 46	
Of which the amount remitted on payment of judgments in the Court of Claims is:			
In favor of Samuel Worthington's administratrix	$8,331 29		
In favor of Wm. W. Worthington	2,272 17		
		10,603 46	
Leaving as chargeable against the proceeds of the sale of 1,075 of the 2,111 bales sold		8,600 00	
			363,398 02
The net proceeds in which charges for custom-house fees and internal-revenue tax are included are			2,609,342 11
And the like proceeds in which these charges are excluded are			$2,753,951 28
From out of such net proceeds officers of the United States have paid, and there is otherwise involved—			
1. To various persons claiming to be owners of cotton so sold, the proceeds of 1,497 bales, amounting to		$408,200 80	
2. To various persons for collecting portions of the cotton sold		30,825 72	
3. Involved in appeal pending in the United States Supreme Court in the Elgee case		16,309 08	
4. The net proceeds due to 2,702 bales and involved in judgments entered in the United States Court of Claims amounts to		888,487 35	
5. The net proceeds due to 45 bales specifically traced are		14,759 90	
			1,358,582 85
And the balance in the Treasury available to payment of judgments in the Court of Claims is			1,395,368 43

By reference to said tabulated statement, marked "Exhibit No. 1," the above facts will be seen fully set out.

As to the 1,497 bales nominally released to the owners, the following facts are found: At various times after the sales of cotton, and while the proceeds were on deposit with the assistant treasurer of the United States at Cincinnati, and were subject to the draft or order of the supervising special agent of the Treasury, persons would appear claiming to have been the owners of some of the cotton which had been sold, and produce affidavits to prove their title. On being satisfied of their loyalty, the Secretary of the Treasury would direct the supervising

special agent to release to the applicant the proceeds of a specified number of bales, deducting therefrom the custom-house fees and internal-revenue tax. The special agent would thereupon pay to the applicant, out of the moneys subject to his draft, as before stated, the amount which he supposed represented the avails of the applicant's cotton, deducting, however, the custom-house fees and internal-revenue tax. But in making these estimates the special agent did not take into account the losses to which the mass of cotton had been subjected before it came into his hands. Consequently, while he nominally released the proceeds of a given number of bales, less the custom-house fees and internal-revenue tax, he really released the proceeds of a much larger number. Therefore, after the custom-house fees and internal-revenue tax had been deducted, there was released, as representing 1,497 bales, the sum of four hundred and seven thousand six hundred and eighty-eight dollars and seven cents, ($407,688.07,) as above shown, giving an average of $272.33 per bale.

To arrange the cotton referred to, and the corresponding proceeds into funds, is a task of no little delicacy. There is so much uncertainty connected with the facts, and the various lots are so confused and intermingled, that it is only possible to approximate, and we are compelled to grope in the dark and separate the cotton into funds with such imperfect lights as we have before us. I have divided the cotton captured in Mississippi into eight separate funds, and in so doing have taken the cotton remaining on hand only.

The cotton paid out for collecting, burned or lost, and released in kind, or in net proceeds, has been excluded from the various funds; but the cotton disposed of by the court has been included in the fund, except the cotton in controversy in the case of Woodruff, Bouchard & Elgee, and the funds arising therefrom. This case being undecided, on appeal, the property has been excluded from the funds.

In cases where the net proceeds of cotton were released by the Treasury agents to persons claiming to own them, the amounts assessed for custom-house fees and internal-revenue taxes were always retained by the Government. In this report such sums, so retained, have been considered and counted as a part of the fund.

11 THIRD FUND.

During the year 1863, an expedition was sent to Washington County, Mississippi, under the command of General Ransom. Under him was Captain (afterward Colonel) E. D. Osband. This expedition, about the first of March, 1863, captured a large quantity of cotton. About two thousand one hundred and eighty (2,180) bales of this cotton was shipped on board the Empress, to Memphis, where it was delivered to Captain Greenbury L. Fort, assistant quartermaster, who, about the tenth day of April, 1863, sold twenty-one hundred and eleven bales thereof, for four hundred and twenty-nine thousand six hundred and sixty-three dollars and thirty-nine cents, ($429,663.39,) and used the money for the ordinary expenses of the Quartermaster's Department. Colonel Osband was subsequently stationed at Skipwith Landing, and captured and shipped during that year several other lots of cotton.

In addition to the said captures made by Ransom and Osband, other lots were captured in that county in April, May, June, July, and a small lot of ten bales in November or December, 1863.

I think all the cotton captured in Washington County during the time mentioned should be consolidated into one fund, to respond to the claims of those persons who show that their cotton was seized in that county during that year. This will constitute the third fund. The par-

icular lots which were derived from this county, with dates of shipment, &c., will appear from Exhibit No. 4, herewith filed.

Two judgments of this court have been rendered in favor of parties claiming to have contributed to the Fort cotton. One was in favor of Samuel Worthington, for eight hundred and fourteen (814) bales, and the sum of one hundred and sixty-five thousand six hundred and seventy-three dollars and forty-two cents, ($165,673.42,) and the other was in favor of William W. Worthington, for two hundred and twenty-two (222) bales, and the sum of forty-five thousand one hundred and seventy-seven dollars, ($45,177,) being at the rate of $203.53 and $203.50 per bale, respectively.

By reference to the recapitulation of the various funds hereinafter set forth, it will be seen that this allowance was beyond the average rate per bale, which can be paid to the remaining claimants out of the available funds in the Treasury, arising from the sale of Washington County cotton. It appears, however, from the records of the Treasury Department that these judgments were not paid in full; charges for transportation, &c., at the rate of eight dollars ($8) per bale, and internal revenue taxes were deducted, and only the balance resulting from these deductions was paid.

The same charge of eight dollars ($8) per bale has been deducted by me from the fund remaining on hand derived from the Fort cotton.

After deducting the amounts recovered in judgments of the court heretofore rendered and the amount released by the Treasury, there will remain a balance in the Treasury derived from cotton which has been segregated as belonging to the third fund, amounting to $225,847.11, and this is designated for the purposes of this report as the third fund. The number of bales segregated as above and represented by this fund is 2,017, giving as the price per bale which should be recovered by claimants, $111.97.

THIRD FUND.

Whole number of bales allotted to this fund is	2,207		$436,697 53
Judgments to be deducted:			
Samuel Worthington's administratrix	814	$165,673 42	
W. W. Worthington	222	45,177 00	
	1,036		210,850 42
Leaving available in third fund	1,171 bales		225,847 11

WILLIAM F. SMITH *vs.* THE UNITED STATES. } No. 3486.

This suit was instituted to recover the proceeds of fifteen bales of cotton, said to have been captured in Washington County, Mississippi, in December, 1863.

The proof shows that the claimant in December, 1863, owned and had on his plantation in said county, sixteen bales of cotton, and that the same was at that time captured by a portion of the command of Colonel Osband, and carried to Skipwith Landing, when it was loaded upon vessels and carried down the river.

The claimant is entitled to recover the proceeds of fifteen bales of cotton at the average rate per bale, payable out of the third or Washington County fund.

15 bales of cotton, at $111.97 per bale $1,679 55

Respectfully submitted to the honorable Court of Claims by—

E. EVELETH,

WASHINGTON, D. C., *March* 2, 1875. *Commissioner.*

12 *Exhibit No. 1, referred*

General account or recapitulation relative to captured or abandoned cotton derived from the Wm. P. Mellen, sup. spec'l agent Treasury Department, and by Captains A. R.

Accounts referred to.		Received.		Lost or stolen.	Transferred for hospital purposes.	Burned at depot near Vicksburg.	How disposed of not specifically traced.	Released in kind.	Bales.	Parts.	Pounds.	Gross proceeds.	Charges.
No.	County, &c.	Bales.	Parts.										
	Warren	944	..	..	..	..	..	..	944	..	345,038	212,655 72	31,315 79
	Hinds	216	..	..	..	..	..	128	88	..	36,070	12,336 46	2,227 80
	Tishomingo	124	13	..	..	..	..	..	124	13	57,951	26,716 99	2,485 65
	Bolivar	916	2	..	..	..	..	748 & 2 parts.	168	..	66,709	31,061 08	5,155 88
	Yazoo	1,827	6	..	..	..	..	..	1,827	6	859,383	459,228 10	54,219 43
	Holmes	16	..	..	..	..	..	..	16	..	6,106	2,450 87	559 42
	Adams	319	..	..	1	1	..	..	317	..	130,387	127,651 85	16,008 66
	Claiborne	266	..	..	..	..	..	..	266	..	104,413	56,812 28	10,946 23
	Issaquena	205	..	..	..	..	..	94	111	..	44,604	33,661 84	4,661 89
	Washington	125	..	..	..	..	..	..	125	..	47,805	22,196 42	5,450 53
	Tunica	51	..	..	..	..	..	..	51	..	22,765	12,784 08	2,060 07
	Jefferson	100	..	..	..	..	..	..	100	..	40,052	27,240 40	4,142 91
	Coahoma	809	24	..	..	..	..	372	437	24	186,357	151,426 37	17,071 75
	Wilkinson	582	..	..	..	..	..	..	582	..	276,458	479,340 75	107,162 29
	Without specific information necessary to determine the county from which taken	3,164	5	1	23	82	151	624	2,283	5	831,211	640,370 45	88,487 31
		9,664	50	1	24	83	151	1,966 & 2 parts.	7,439	48	3,055,309	2,295,933 66	351,955 61
First..	To which add the following: Cotton taken to Memphis, Tennessee, on the 5th of April, 1863, on the steamboat "Empress," and understood to be the same lot of cotton seized by Capt. E. D. Osband, 4th Illinois Cavalry, (bales) 2,180 Less sixty-nine bales transferred by Capt. Fort to Thos. H. Yeatman, Treas'y agt. at Memphis, and by him to W. P. Mellen..... 69												
	Per acct. herewith, marked G. L. F.	2,111	..	..	..	..	..	..	2,111	..	.....	429,663 39	8,600 00
Second	Sales by Capt. A. R. Eddy per acct. herewith, marked A. R. E.	974	..	..	..	..	..	134	813	..	.....	247,143 08	2,842 41
		12,722	50	1	24	83	151	2,100 & 2 parts.	10,363	48	3,055,309	2,972,740 13	363,398 02

to in report.

State of Mississippi, proceeds of sales of which are accounted for in accounts rendered by Eddy and G. L. Fort, officers of the Quartermaster's Department, U. S. Army.

Net proceeds.	Released in net proceeds.		Paid for collecting.		Judgments in Court of Claims.		Remaining available.			
							Quantity.		Net proceeds including C. H. fees and int. rev. tax.	Net proceeds excluding C. H. fees and int. rev. tax.
	Amount.	Due to bales.	Amount.	Due to bales.	Amount.	Bales.	Bales.	Parts.		
181, 339 93	20, 693 67	129	8, 233 80	39½	125, 620 55	561	214½	...	26, 791 91	42, 284 64
10, 108 66	.....	.....	.....	.....	.....	.....	88	...	10, 108 66	10, 830 08
24, 231 34	.....	.....	.....	.....	.....	.....	124	13	24, 231 34	25, 457 44
25, 905 20	25, 905 20	166	.....	.....	.....	.....	.....	...	.....	3, 001 91
405, 008 67	41, 363 58	176	.....	.....	.....	.....	1, 651	6	363, 645 09	401, 174 26
1, 891 45	.....	.....	.....	.....	.....	.....	16	...	1, 891 45	2, 013 07
111, 643 19	75, 877 74	159	6, 725 25	31	.....	.....	127	...	29, 040 20	35, 986 46
45, 866 05	8, 558 56	72	7, 440 35	31½	.....	.....	162¼	...	29, 867 14	34, 094 83
28, 999 95	23, 896 83	91	.....	.....	.....	.....	20	...	5, 103 12	7, 277 67
16, 745 89	1, 663 45	7	.....	.....	1, 356 10	17	101	...	13, 726 34	16, 076 58
10, 724 01	9, 208 54	41	.....	.....	.....	.....	10	...	1, 515 47	2, 545 79
23, 097 49	.....	.....	5, 173 59	25	17, 923 90	75	.....	.....	.....	.....
134, 354 62	128, 478 02	415 & 2 parts.	.....	.....	.....	.....	22	11	5, 876 60	15, 242 67
372, 178 46	.....	.....	.....	.....	366, 170 83	579	10	...	6, 007 63	6, 286 03
551, 883 14	72, 042 48	239	3, 252 73	12½	23, 589 43	83	1, 948¾	5	452, 998 50	496, 832 09
1, 943, 978 05	407, 689 07	1, 497 & 2 parts.	30, 825 72	139½	534, 660 81	1, 308	4, 494½	35	970, 803 45	1, 099, 103 54
421, 063 39	.....	.....	.....	.....	210, 850 42	1, 036	1, 075	...	210, 212 97	210, 212 97
244, 300 67	.....	.....	.....	.....	125, 172 20	358	455	...	119, 128 47	119, 128 47
2, 609, 342 11	407, 688 07	1, 497 & 2 parts.	30, 825 72	139½	870, 683 43	2, 702	6, 024½	35	1, 300, 144 89	1, 428, 444 98

13 *Exhibit No. 4, with second report of special commissioner.*

THIRD FUND.

Cotton shipped from Washington County, Miss.

Lot.	Shipped. From—	To—	When.	Bales.	Amount available.
	*Worthington Ld'g	Memphis	Mch. 28, 1863	2,111	421,063 39
19	Shirt-tail Bend	"	Apr. 1, 1863	69	9,662 31
32	Grenville	"	May 1, "	13	2,152 06
100	Chickasaw Post	"	July, "	.....	337 55
94	Chickasaw	"	" "	2	356 22
87	Chickasaw Bayou	"	" "	2	360 78
166	Skipwith Ld'g	"	Nov. or Dec., "	10	2,765 22
	Total			2,207	436,697 53
	Judgments in U. S. Court of Claims:				
			Bales.		
	Samuel Worthington's admx		814 $165,673 42		
	William W. Worthington		222 45,177 00		
				1,036	210,850 42
	Total available			1,171	$225,847 11

*Cap'd or collected by Capt. E. D. Osband, 4th Ill. Cav., in 1863.

Exhibit No. 10, with second report of special commissioner.—Schedule of cases in which allowances are made.

* * * * * * *

	THIRD FUND.							
3165	Mrs. E. E. Mount	Issaquena	March, 1864	Memphis	5	5	665 60
3169	Nannette Abel	Washington Co	Mch. or Apr., 1863	Memphis	100	100	13,312 00
3372	James J. Person	Washington & Issaquena Cos.	Mch. or Apr., "	Memphis	425	385	51,251 20
3539	Fred'k A. Metcalf, adm'r.	Washington Co.	Mch. 5, "	"	55	55	7,321 60
9740	Robt. M. Douglass et al	" "	" 1864	"	1,685	1,457	193,955 84
					2,270	2,002	266,506 24

And upon the foregoing findings of fact, the court decides the following as its—

CONCLUSIONS OF LAW.

1. The counsel for the Government not having taken steps to consolidate suits where the parties were seeking to recover the proceeds of their property out of a common fund, the court would have been compelled to try the cases separately, and render judgment in each without charging each with a conjectural proportion of the general losses to which the fund might have been subjected. It appearing to the court that, at the rate claimants had been recovering, the funds would be exhausted before all of the judgments likely to be recovered were satisfied, and that the resulting consequence would be either that the later judgments would remain unsatisfied or that the Government would be required to satisfy them from other sources, the court was warranted, for the ultimate protection of the Government and of such later claimants, in suspending proceedings in all of the cases before it, and sending them to a commissioner, who, as an accountant, would marshal the assets of the property, and charge it with the proper losses, so that equal and

exact justice should be done to all. As to the title of the claimants and their rights to the proceeds, the court has determined them upon the evidence irrespective of the commissioner's report, wherever requested so to do by either the claimant or the defendants. The first exception of the defendants to the reference of these cases to a commissioner is therefore overruled.

2. As to the Natchez and Vicksburgh cotton, it appears from the evidence that the parcels of different owners were intermingled before shipment, and that some of the shipments from the two points were subsequently intermingled. It being impossible to trace the specific property of each owner, and likewise impossible to determine whether his cotton remained in a shipment from the original point of shipment, or went into the intermingled shipments from different points, the whole must be thrown into a common mass, and the average thereof be the measure of damages for all who contributed thereto.

3. With regard to suits brought subsequent to the 20th day of August, 1868, to recover out of the funds now disposed of, the court has no jurisdiction to hear and determine them, and no reservation can be made from the fund to await the possibility of jurisdiction being hereafter conferred.

By the court.

14 In the Court of Claims.

WILLIAM F. SMITH *vs.* THE UNITED STATES. } No. 3486.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon; of the application of the Attorney-General, for the defendants, for the allowance of an appeal, as filed in the clerk's office August 19, 1875, and of the order of the chief-justice of said court allowing the same; of the order of the court made May 24, 1875; of the findings of fact by the court, and the conclusions of law thereon.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this twenty-fourth day of January, A. D. 1876.

[SEAL.]

JOHN RANDOLPH,
Asst. Clerk Court of Claims.

(Indorsement on cover:) No. 922. The United States, appellant, vs. William F. Smith. Court of Claims. Filed February 2, 1876.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1875.

No. 908.	THE UNITED STATES,	APPT.,	vs.	JNO. B. RAYMOND, ASSIGNEE, &C.
911.	"	"	"	"	"	THOMAS KIDD.
912.	"	"	"	"	"	J. J. COWAN, ADMR., &C.
913.	"	"	"	"	"	J. B. BRABSTON.
914.	"	"	"	"	"	CHARLOTTE SPEAR.
915.	"	"	"	"	"	E. K. McLEAN.
916.	"	"	"	"	"	J. REESE COOK.
917.	"	"	"	"	"	ELLEN D. BATCHELOR.
918.	"	"	"	"	"	GEORGE HAWKINS.
919.	"	"	"	"	"	J. J. COWAN, ADMR., &C.
921.	"	"	"	"	"	ROBERT G. JOHNSON.
922.	"	"	"	"	"	WM. F. SMITH.
924.	"	"	"	"	"	HANNAH BODENHEIM.

APPEALS FROM THE COURT OF CLAIMS.

On consideration of the motion of counsel for the appellees, it is ordered & directed that the several records in the above-named cases be remanded to the Court of Claims, with directions to said court to certify in each of said cases, to wit:

1st. Whether the cotton owned by these respective claimants, and seized from them by the United States, did or did not constitute a part of the cotton delivered to and received by the Treasury agent of the United States at Vicksburg, Miss., during the years 1863 and 1864, and whether or not the same was there intermingled with other cotton, belonging to other persons, so as to destroy the identity of the several lots belonging to the various persons from whom the same had been seized.

2nd. Whether the proceeds of the sales of the various lots of cotton, owned by and seized from the respective appellees in these cases, do or do not constitute a part of the fund found to be in the Treasury of the United States, accruing from the sales of the said intermingled mass of cotton, so shipped from Vicksburg, Miss., during said years 1863 and 1864, and which was sold at Cincinnati & St. Louis, for and on behalf of the United States.

And that the said Court of Claims make due return in the premises.

28 March, 1876.

True copy.

[SEAL.] Test:

D. W. MIDDLETON,
Clerk Sup. Court U. S.

WM. F. SMITH
v.
THE UNITED STATES.

Supplemental findings of fact.

The Court of Claims, pursuant to the order of the Supreme Court, made March 28th, 1876, requiring this court to make and certify as to certain facts in this case, does now make an' certify to the Supreme Court the following supplemental facts:

First. And in response to the instruction of the Supreme Court to find, "Whether the cotton owned by the claimant and seized from him by the United States did or did not constitute a part of the cotton delivered to and received by the Treasury agent at Vicksburg, Miss., during the years 1863 and 1864"—

The Court of Claims finds as follows: The cotton owned by the claimant and seized from him by the United States was carried away from his plantation in Washington County, Mississippi, by soldiers under the command of Colonel Osbond, in December, 1863, and carried to Skipworth's Landing, where it was loaded upon vessels and shipped down the river, as detailed in the previous findings of the court. It is not specifically traced to the official custody of any Treasury agent or
2 military officer, and from the circumstances attending its seizure and shipment it cannot be so traced. But the Treasury agents at Cincin'atti and St. Louis during the year 1863 received large quantities of cotton, captured in Washington County, belonging in part to unknown owners; and neither the loss of the claimant's cotton, nor its shipment to any other point, is shown by the defendants. The Court of Claims upon these facts and the presumptions therefrom arising finds, though without there being direct proof of the ultimate fact, that the claimant's cotton constituted a part of the cotton received by the said Treasury agents from Washington County, belonging to unknown owners, and contributed to the portion of the fund set forth in the commissioner's report which formed a part of the previous finding of this court.

Second. And in response to the instructions of the Supreme Court to find, "Whether or not the same was there intermingled with other cotton belonging to other persons, so as to destroy the identity of the several lots belonging to the various persons from whom the same had been seized," the Court of Claims finds as follows: The cotton so seized was intermingled with other cotton belonging to other persons,
3 immediately after capture, and before shipment, so as to destroy the identity of the several lots; and the various shipments from different points were subsequently intermingled in whole or in part, so that is impossible to determine whether the cotton of the owners now before the court remained in a shipment from the original point or went into intermingled shipments from different points, and it is likewise impossible to ascertain the specific rate at which a claimant should recover, except by throwing the whole into a common mass, as has been done in the report of the commissioner forming a part of the previous findings of the court.

Third. And in the response to the instruction of the Supreme Court to find—

"Whether the proceeds of the sales of the cotton owned by and seized from the claimant in this case do or do not constitute a part of the fund found to be in the Treasury of the United States, accruing from the sales of the said intermingled mass of cotton so shipped from Vicksburg, Miss., during said years 1863 and 1864, and which was sold at Cincin'atti and St. Louis, for and on behalf of the United States"—

The Court of Claims finds as follows: There is no direct evidence
4 to show that the claimant's cotton continued in, or was seperated from, the cotton with which it was intermingled. The cotton captured in Washington County was shipped to different points, and came to the custody of different agents and officers. A portion was sold by Captain Fort, a quartermaster at Memphis, and the moneys received therefrom were expended by him for the ordinary expenses of the Quartermaster's Department, but he subsequently accounted for the same, and the amount thereof was passed by the Treasury to the credit of the *the* abandoned or captured property fund. The claimant's cotton was captured subsequent to this sale, but cotton previously captured from other persons was so intermingled that portions thereof went into different sale, and this court therefore has treated the proceeds of all sales derived from Washington County cotton as forming a common fund for the owners of cotton captured in that county.

In the Court of Claims, December term, 1875.

John B. Raymond, assignee, &c.,	v. The United States.
Thomas Kidd	vs. Same.
J. J. Cowan, admr. of Sarah Cowan,	" Same.
J. B. Brabston	" Same.
Charlotte Spear	" Same.
E. K. McLean	" Same.
J. Reese Cook	" Same.
Ellen D. Batcheler	" Same.
George Hawkins	" Same.
J. J. Cowan, admr. of John Cowan	" Same.
Robert G. Johnson	" Same.
William F. Smith	" Same.
Hannah Bodenhiem	" Same.

The Court of Claims, in obedience to the order of the Supreme Court of the United States hereunto annexed and returned, makes these its supplemental findings of fact in each of the causes aforesaid.

In testimony whereof I hereunto set my hand and affix the seal of said Court of Claims this 3rd day of April, 1876.

JOHN RANDOLPH,
Asst. Clk. Court of Claims.

In the Supreme Court of the United States.

OCTOBER TERM, 1875.

No. 922.

THE UNITED STATES, APPELLANTS,

vs.

WILLIAM F. SMITH, APPELLEE.

APPEAL FROM THE COURT OF CLAIMS.

Statement of the Case.

William F. Smith filed his petition in the United States Court of Claims for the proceeds of fifteen bales of cotton, owned by him and stored upon his plantation, in the county of Washington and the State of Mississippi, which cotton was seized from him by the military forces of the United States, under command of Col. Osband, in December, 1863, and shipped to Vicksburg, when it was turned over to a United States Treasury Agent, and sold by authority of the United States, and the proceeds thereof were deposited in the Treasury.

FINDINGS OF FACTS.

The Court of Claims, in this case, made the following Findings of Facts:

1. That fifteen bales of cotton were in the ownership of Smith, on his plantation in Washington county, Miss., in the month of December, 1863.

(See page 11.)

2. That said cotton was then and there seized by the military forces of the United States:

(See page 11.)

3. That the said cotton was the property of the said claimant:

(See page 11.)

4. That after the seizure of said cotton the same was transported down the river.

5. The said Court found further, that the cotton owned by the claimant, constituted a part of the cotton received by the Treasury Agents at Vicksburg, and that it contributed to the fund set forth in the Commissioner's Report, which was part of the previous findings of said Court:

(See page 1 of Supplemental Findings.)

6. That the cotton, so seized, was intermingled with other cotton belonging to other persons immediately after the capture thereof, and before its shipment, so that its *specific* identity was destroyed:

(See page 1 of Supplemental Findings.)

7. That the proceeds of the sale of claimant's cotton do constitute a part of the fund accruing from the sales of the intermingled mass of cotton so shipped from Vicksburg, and afterwards sold at St. Louis and Cincinnati, the proceeds of which were deposited in the Treasury:

(See page 2 of Supplemental Findings.)

FINDING OF LAW BY THE COURT OF CLAIMS.

From the above-stated Findings of Facts, the Court of Claims deduced the conclusion of law, that the claimant is entitled to judgment for fifteen (15) bales of cotton, at the average rate per bale, payable out of what is known as the

Third or Washington County Fund, making for fifteen bales of cotton, at $111.97 per bale, the sum of $1,679.55.

POINTS IN ARGUMENT.

1. Claimant's possession and ownership of the cotton in controversy distinctly found by the Court of Claims, as an ultimate deduction from the evidence adduced.

2. Seizure of the same from plaintiff's possession alike clearly found.

3. The transportation of the said cotton to Vicksburg, its delivery there to Treasury agents of the Government, its subsequent sale, and the depositing of the proceeds of the said sale in the Treasury Department were found also to be established in proof, entitling plaintiff (the present appellee) to the sum of one thousand six hundred and seventy-nine dollars and fifty-five cents.

Upon this presentation of the case, there would seem to be no room for extended argument or copious adduction of authorities.

BARTLEY & JENNER,
Counsel for Appellee.